

**So Ordered.**



Patricia Williams

**Patricia C. Williams  
Bankruptcy Judge**

**Dated: November 13th, 2013**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

8	In re:	DC No. 11-CV-0449-LRS
9	AMERICANWEST BANCORPORATION,	No. 10-06097-PCW11
10		
11	Debtor(s).	
12	CAPPELLO CAPITAL CORP.,	
13		
14	Plaintiff(s),	Adversary No. 11-80323-PCW
15	vs.	REPORT AND RECOMMENDATION RE: AMERICANWEST BANK'S FURTHER SUBMISSION REGARDING ATTORNEY'S FEES AWARD
	AMERICANWEST BANK, et al.,	
	Defendant(s).	

16 The Honorable Patricia C. Williams, sitting in the United States Bankruptcy  
17 Court for the Eastern District of Washington, hereby files this Report and  
18 Recommendation concerning defendant AmericanWest Bank's Further Submission  
19 Regarding Attorney's Fees Award (DC Case No. CV-11-0449-LRS, ECF Nos. 72  
20 and 73).

## REPORT AND RECOMMENDATION RE: ... ~ Page 1

This Report and Recommendation is made pursuant to the Honorable Lonny R. Suko's Order Referring AmericanWest Bank's Further Submission Regarding Attorney's Fees for Report and Recommendation entered on October 22, 2013 (DC Case No. 11-CV-0449-LRS, ECF No. 78).

It is recommended that AmericanWest Bank's Further Submission Regarding Attorney's Fees for Report and Recommendation Motion for Award of Attorney's Fees be granted. The basis for the recommendation is set forth in the attached Memorandum Decision filed herewith.

## ///REPORT AND RECOMMENDATION///

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6                   UNITED STATES BANKRUPTCY COURT  
7                   EASTERN DISTRICT OF WASHINGTON  
8

9           In re:

10           AMERICANWEST  
11           BANCORPORATION,  
12           Debtor(s).

13           CAPPELLO CAPITAL CORP.,  
14           Plaintiff(s),  
15           vs.  
16           AMERICANWEST BANK, et al.,  
17           Defendant(s).

DC No. CV-11-0449-LRS

No. 10-06097-PCW11

Adversary No. 11-80323-PCW

MEMORANDUM DECISION RE:  
AMERICANWEST BANK'S  
FURTHER SUBMISSION  
REGARDING ATTORNEY'S FEES  
AWARD

18           Pursuant to the orders of the District Court for the Eastern District of  
19           Washington in CV-11-0449-LRS, ECF Nos. 70 and 78, AmericanWest Bank  
20           ("AWB") seeks a supplemental award of fees and costs. The request includes fees of  
21           \$239,379.08 and costs of \$854.48 in relation to the employment of Davis Wright  
22           Tremaine for the period beginning roughly on January 4, 2013 and ending on  
23

1 approximately October 11, 2013. The request also includes charges of \$20,279.18 in  
2 relation to the employment of Orange Legal from January 1, 2013 to July 11, 2013.

3 Cappello Capital Corporation (“Cappello”) objected to the supplemental  
4 award of fees and costs claiming that the requested fees are excessive and exceed a  
5 contractually imposed cap of \$275,000.00. This court addressed this issue when  
6 rendering its decision regarding the initial award in its Memorandum Decision and  
7 Report and Recommendation (ECF No. 286) in the above-captioned adversary  
8 proceeding. The district court adopted this Report and Recommendation on  
9 October 4, 2013 in CV-11-0449-LRS, ECF No. 71. The issue was resolved  
10 adversely to Cappello in the prior decision. In addition to the objections referenced  
11 above, Cappello preserved other objections it made to the initial award of fees.  
12 However, this court also resolved those objections in the decision adopted by the  
13 district court.

14 The billing invoices of Davis Wright Tremaine submitted in support of the  
15 supplemental request have been reviewed entry-by-entry. Those submitted for  
16 Orange Legal have been reviewed in less detail. As discussed in the above-  
17 referenced decision regarding the initial request, the invoices of Davis Wright  
18 Tremaine reflect “block billing.” This court applied the method of analysis utilized  
19 in the above-referenced decision (ECF No. 71) to the block billing at issue here.

1       With some exceptions, the invoices reflect AWB's efforts to recover its  
2 attorney's fees and related expenses as the prevailing party in this adversary  
3 proceeding. In other words, this supplemental fee request represents the efforts of  
4 AWB to prepare, argue and obtain the initial award of fees. Cappello does not argue  
5 and has not raised any issue whether AWB is entitled to reimbursement for fees  
6 incurred in seeking and litigating the initial fee request.

7       Both the bankruptcy court and the district court have a duty to determine  
8 whether requested fees are reasonable. That determination has various components  
9 such as hourly rates, necessity for particular legal tasks, quality of service, etc. This  
10 supplemental request, with few exceptions, represents services relating to the initial  
11 fee request. The issue is whether the fees contained in this supplemental request are  
12 reasonable.

13       The initial fee request covered the period from the beginning of the litigation  
14 to the end of 2012 and exceeded \$4,000,000.00. At the court's request, the parties  
15 provided copies of all pleadings, invoices and other documentation regarding that  
16 request, which constituted four large notebooks. Due to the fact that the reference  
17 had been withdrawn, the bankruptcy court's determination of the initial fee request  
18 was sent to and reviewed by the district court. Thus, the parties filed numerous  
19 pleadings and argued the issues vigorously before two courts thereby expending a  
20 great deal of resources on the initial fee request.

1 Plaintiff has charted the dates and amounts of the invoices relating to this  
2 supplemental fee request as follows:

Davis Wright Tremaine 2013 Invoices				
Invoice #	Invoice Date	Service Date Range	Fees	Disbursements
6128901	3/15/2013	1/4/13-1/31/13	\$25,864.73	\$97.20
6133647	3/31/2013	2/1/13-2/28/13	\$76,726.86	\$55.80
6148325	5/29/2013	3/1/13-4/30/13	\$65,392.44	\$40.31
6154604	6/25/2013	5/1/13-5/31/13	\$35,940.93	\$536.63
6161386	7/26/2013	6/3/13-6/30/13	\$18,096.60	\$120.34
6167653	8/27/2013	7/1/13-7/31/13	\$8,864.96	\$2.10
6173161	9/20/2013	8/1/13-8/31/13	\$4,683.51	\$2.10
WIP	10/11/2013	9/1/13-10/11/13	\$3,809.05	
Total			\$239,379.08	\$854.48

Orange Legal 2013 Invoices				
Invoice #	Invoice Date	Service Date Range	Fees	
13645	1/31/2013	1/1/13-1/31/13	\$4,256.04	
14073	2/28/2013	2/1/13-2/28/13	\$4,147.34	
14284	3/31/2013	3/1/13-3/31/13	\$3,815.40	
14493	4/30/2013	4/1/13-4/30/13	\$4,690.40	
14971	7/11/2013		\$3,370.00	
Total			\$20,279.18	

14 In the early period covered by the supplemental request from January 4, 2013 to  
15 March 29, 2013, events were occurring in both courts that were primarily directly  
16 related to the initial fee request. The district court heard some procedural matters  
17 that were indirectly related to the initial fee request. The issues raised in the district  
18 court had to be resolved before further action could be taken by the bankruptcy court  
19 regarding the initial fee request. AWB estimates that during this early period,  
20 approximately two-thirds of the fees now at issue were directly related to the events

1 in the bankruptcy court regarding the initial fee request and approximately one-third  
2 were related to the events in the district court. Cappello has not contested that  
3 allocation and this court's review of the submitted invoices supports the allocation.  
4 In total, the fees for the early period appear reasonable based upon the review of the  
5 applicable billing invoices, the dockets for that period in both the bankruptcy and  
6 district courts, and this court's familiarity with the issues and process.

7 All fees and costs incurred for the next period -- April 1, 2013 to mid-June  
8 2013 -- represented tasks directly related to the initial fee request. At that time, the  
9 bankruptcy court was in the process of reviewing the initial fee request. This court  
10 issued a Memorandum Decision and Report and Recommendation in June. The fees  
11 contained in this supplemental request for that period of time appear reasonable  
12 based upon the review of the applicable billing invoices, the dockets for that period  
13 in both the bankruptcy and district courts, and this court's familiarity with the issues  
14 and process.

15 The Report and Recommendation was transmitted to the district court on  
16 August 27, 2013. All fees in this supplemental request for the period from mid-June  
17 2013 through October 11, 2013 are directly related to the review by the district court  
18 of the bankruptcy court's Memorandum Decision and Report and Recommendation  
19 regarding the initial fee request. The fees and costs requested for this period appear  
20 reasonable based upon the review of applicable billing invoices, the dockets for that

1 period in both bankruptcy and district courts, and this court's familiarity with the  
2 issues and process.

3 Other than preserving the objections it raised regarding the initial fee request,  
4 Cappello has not objected to the supplemental award. This court addressed and  
5 disposed of those particular objections in its decision concerning the initial award. In  
6 sum, this court has reviewed the supplemental request and determined that the fees  
7 and costs are reasonable.

8 The fees and related costs in the supplemental request which total  
9 \$260,512.74 should be awarded as follows:

10	\$239,379.08	Davis Wright Tremaine Fees
11	\$ 854.48	Davis Wright Tremaine Costs
	<u>\$ 20,279.18</u>	Orange Legal Fees
12	\$260,512.74	Total Fees/Costs Awarded

13                   /// END OF MEMORANDUM DECISION ///

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